

Flemish Activity and Perspective at the EU and the UN¹

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Flandesen iritziz, oso garrantzitsua da, maila federalean, koordinazioaren eta kolaborazioaren bidez, ezarritako nazioarteko erabakietan estatuazpiko parte-hartzea egotea. Era berean, Flandesek aktiboki bilatzen du estatuaz gaindiko parte hartzea ere. Europako politikan, egitura formalak, hala nola Herrialde Batzordeak, ezarri dira, baita baliabide informalagoak ere. Politika multilateralean, berriz, aukera berriak sortu dira, besteak beste, Garapen Iraunkorrerako Lurralde Gobernuen Sarearen ekimen garrantzitsua (NRG4SD).

Giltza-Hitzak: Flandes. Belgika. Nazioarteko erabakiak hartzea. Parte-hartze zuzena. Koordinazio. Multilateral. Europa.

Flandes considera que es muy importante la participación intraestatal en la toma de decisiones internacional a través de la coordinación y la colaboración con el nivel federal. Por otra parte, Flandes explora intensivamente las posibilidades de la participación extra-estatal. En lo que se refiere a la política de la Unión Europea, existen estructuras formales como el Comité de las Regiones y otros instrumentos más informales. Están emergiendo nuevas posibilidades para la política multilateral entre las cuales una iniciativa importante es la Red de Gobiernos Regionales para el Desarrollo Sostenible (NRG4SD).

Palabras Clave: Flandes. Bélgica. Toma de decisiones internacionales. Participación directa. Coordinación. Multilateral. Europa.

Les Flandres considèrent que la participation infra-étatique aux décisions internationales établies sur la base de la coordination et de la collaboration au niveau fédéral joue un rôle important. Par ailleurs, les Flandres recherchent activement des options de participation à un niveau extra-étatique. Pour la politique européenne, des structures formelles telles que le Comité des Régions sont en place, outre des outils plus informels. Pour la politique multilatérale, de nouvelles possibilités voient le jour dont l'importante initiative du Réseau des Gouvernements Régionaux pour le Développement Durable (NRG4SD).

Mots Clé : Flandes. Belgique. Prise de décision internationale. Participation directe. Coordination. Multilatéral. Europe.

1. This article summarises a contribution to the seminars at St-Anthony's College in Oxford (20th of May 2004) and in San Sebastian (13th of June 2004) on "Sub-state entities and co-sovereignty within the Eu".

FOREWORD

Although many publications and articles reflect upon the Belgian federal system or the role of Flanders in the international arena, fewer have focused on the intra-Belgian co-ordination mechanisms and agreements through which Flemish influence operates. Along with this aspect, the article will also draw attention to some of the possible extra-Belgian routes that Flanders and other regions could use to influence the international agenda. The choice of international environment and sustainable development policy as an example derives from my practical experience at the UN, OECD and EU-level in these matters.

This article of course does not claim to be an exhaustive description and only seeks to introduce readers to the subject.

I would like to thank following colleagues for their kind help in producing this article. Hadewich de Keulenaer from the Flemish External Affairs Department for providing some of the necessary detailed information. Matthew Quinn from the Welsh Assembly Government for adjustment reading and Xabier Ezeizabarrena Basque fellow at St Anthony's College for inviting me to reflect on the issue at seminars in Oxford and San Sebastian.

INTRODUCTION

Flanders does not only pursue an autonomous domestic policy; it also acts as a political and economic player in international relations. The Flemish Government for example is able to conclude treaties with other countries and regions on matters for which Flanders is competent.

This foreign autonomy is virtually non-existent in other federal countries and therefore tends to raise questions such as: "Doesn't a federated entity with its own foreign policy clash with its country's federal foreign policy?".

Belgium has found a working solution for this through its state reforms over the last decades. When it comes to foreign affairs, the different governments have to consult with each other. In this way there can be no threat to the coherence of Flanders and Belgium's foreign policy. This leaves the Flemish Government consistently to carry through its domestic policy in its international relations.²

Flanders considers the intra-state participation in international decision making through co-ordination and collaboration with the federal level and the other regions as very important. Apart from this Flanders also explores intensively the possibilities for extra-state participation, i.e. through direct action without Belgian internal consensus. The means for this are still limited and mostly informal. For EU-policy, formal structures such as the Committee of the regions exist.

2. www.flanders.be.

For multilateral policy new possibilities are emerging of which one important initiative is NRG4SD.³

The scope for Flemish participation and activity at the EU and the multilateral fora, more specifically the UN and its different agencies, originates from the Belgian federal system as it was established and proclaimed in the important constitution reform of 1993.

The consecutive state reforms over 4 decades in 1970, 1980, 1988 and 1993 and 2001 changed Belgium from a very centralised state to the current federal state with large and exclusive responsibilities and growing autonomy for the regions. In 1993 the regions (and communities) also got international responsibility for those competencies attributed to them. This includes *inter alia* external representation and treaty making power.

For a better understanding of these powers a short overview of the internal division of competencies and the unique character of the Belgian federal system is, though already frequently documented and studied by experts in Flanders and abroad, unavoidable.

DIVISION OF COMPETENCIES IN BELGIUM

Domestic

In Belgium competencies are attributed to the regions, the communities and the federal level. The Regions (Flanders, Wallonia & Brussels) are competent for territory-related matters, such as the economy, environment, agriculture, town and country planning, etc.. The Communities (Flemish, French & German speaking community) have competencies related to persons, such as culture, education, public health, etc.. Flanders has united both region and community in a single Flemish Parliament and Government in 1980, which has leant it a particular status in the Belgian Federal system.

Finally the Belgian federal level is responsible for the so-called residual, but very essential, matters of which the budget, general foreign policy, defence and justice are the most eye-catching.

It is important to re-emphasise there is no hierarchy of authority. This means a Federal Law cannot overrule a regional decree. This is also a result of, and is in line with, the fact that specific competencies are either exclusive or mixed (in relation to different competencies in one policy domain) but never shared. For any given issue either the federal State or the regions and communities are competent (never both).

3. Network of Regional Governments for Sustainable Development, founded through the Gauteng declaration of 31 st of August 2002 in Johannesburg during the World Summit on Sustainable Development.

Of course the attribution of the respective competencies has to be in line with the constitution. If this seems to be violated or when there is no agreement about this attribution the Court of Arbitration rules on the constitutional aspects but not on the mere content.

International

A rather unique feature of the Belgian federal system is the parallelism between the internal and the external division of competencies: when a region (ie. Flanders) is internally competent for an issue (for instance education, culture, tourism, etc.) it is automatically also granted competence for the external relations concerning the issue. The basic principle therefore is captured as "*in foro interno, in foro externo*".

It follows from these features that Flanders is directly concerned by EU-matters as far as regional competencies are concerned (for instance, within their competencies the Flemish government and parliament are obliged to transpose EU-directives directly into regional legislation).

There are other aspects of the international activity of Flanders that space does not permit full coverage here. These include the exclusive powers on foreign trade and the intra-Belgian division of powers in regard to development co-operation since the most recent state reform of 2001.

As a consequence, the Belgian Foreign Trade Service was abolished and replaced by an inter-federal Agency. The draft co-operation agreement for the establishment of this Agency was adopted on 9 March 2001.

Since 2001 the regions and communities also have the instrumental responsibility for development co-operation with regard to their areas of sectoral competence. To this end, for example, Flanders has a specific Flemish Association for Training Programmes abroad.

The federal government, pending an agreement on a detailed description of the modalities of this de-federalisation, continues to implement a development co-operation policy that also covers the areas of competence of the regions and communities. The 2001 state reform stipulates that parts of the federal development co-operation will be transferred insofar as they relate to Community and Regional powers. The DAC⁴ of the OECD judged these decisions quite negatively, was concerned about potential co-ordination difficulties and dispersion of means, and asked for caution in executing the 2001 decision. These concerns are rightful but they do not take in to account that the expertise in many areas no longer exist in the federal administration due to devolution and so the federal programmes in these areas do not always guaranty qualitative capacity building in the partner countries in these specific areas. In this respect Flanders could

4. Development Assistance Committee.

very well execute its development co-operation competencies through an even more efficient use of the means.

Treaty-making power and legal proceedings before international and supranational courts are other important aspects that require a more detailed description but given their more specific legal character, these are not included in this compact introduction to Flemish International Activity.

Though the above features have a considerable impact on Flemish International policy, this article chooses to elaborate more on representation at the EU and in international organisations and EU- and multilateral policy. The case of external policy on environment and sustainable development will be used to illustrate these.

FLEMISH POLICY AND REPRESENTATION AT THE EU-LEVEL

As a consequence of the characteristics mentioned above, Flanders possesses a number of means of participation in order to seek to influence EU-policy making.

Council

A regional minister represents Belgium in the Council as far as regional competencies are concerned. However, owing to EU-rules, this minister has to represent Belgium as a whole and cannot speak on behalf of the region only. Therefore an intra-Belgian co-ordination scheme has been developed, where the federal government as well as the regions and communities gather in order to come to a common position. This scheme will be elaborated further in this paper.

Parliament

In the European Parliament 14 out of the 24 Belgian members are elected in Flanders. These Flemish MEPs can, on an ad hoc basis, be contacted for information or support in specific dossiers. Although this more or less informal instrument has, especially with a growing power for European Parliament through a possible new Constitution, a lot of virtue, it is still not sufficiently used.

Belgian Permanent Representation to the European Union

A Representative of the Flemish Government is official member of the Belgian Permanent Representation to the European Union. As such, this representative and his team members have full and direct access to the EU-institutions.

Committee of the Regions

The Flemish government designates 6 out of the 12 Belgian representatives in the Committee of the Regions. In Flanders' view, however, the limited advisory

powers of the Committee are insufficient to guarantee a desirable degree of protection of the regional interests in EU-policy shaping. Also, Flanders considers the Committee's capacity for resolute action to be further hampered by the heterogeneous composition of the Committee ranging from local to even national representatives.

EU-interregional co-operation

These doubts do not mean that Flanders has no strong beliefs in the merits of interregional co-operation or association. Flanders is for some time now active in a network of regions with legislative powers (REGLEG) in order to strive for a strengthening of the role and status of the regions in the EU (both in terms of institutional reform and of better 'European Governance').

Council Representation

Because of the importance of the role of the Council in the EU-decision-making process some further insight on the Belgian process is given below.

The entry into force of Treaty of Maastricht in 1993 paved the way for regional ministerial representation in the Council through the modification of the EU-treaty (art. 203 EC): "The Council shall consist of a representative of each member state at ministerial level, authorised to commit the government of that member state." This explicitly means that Regional ministers can represent a member state within the council, and speak/vote on behalf of the Member State.⁵ Consequently regional civil servants participate in the Council working parties, and speak/vote on behalf of the member state.

Even though this representation could be similar for other federal states, in practice only Belgium uses this option to the fullest and the UK to a lesser extent.

The 2001 Belgian EU-Presidency was, from a regional perspective, historically important because for the first time regional ministers presided over EU-council meetings. For instance the Councils of Education, Youth and Tourism were chaired by members of the Flemish regional government (on behalf of the Belgian Presidency).

According to the intra-Belgian division of competencies, the various Council meetings are divided into categories, and the constellation of the Belgian delegation is decided accordingly (see box below).

Concerning categories II – IV, the actual make up of the Belgian delegation (which region has which role to play) follows a six monthly rotation principle.

5. The regional ministers or civil servants represent the *member state*, not their own region (they have to defend a concerted position and cannot merely speak on behalf of their own region).

EU-Councils : categories

CATEGORY 1 : exclusive federal competencies > only a federal representative

- General Affairs
- Ecofin
- Budget
- Justice
- Telecommunications
- Consumer Policy
- Development Co-operation

CATEGORY 2: Mixed, though mainly federal competencies > a federal representative and a regional assessor⁶

- Internal Market
- Health
- Energy
- Transport
- Social Affairs

CATEGORY 3: Mixed, though mainly regional competencies > a regional representative and a federal assessor

- Industry
- Research
- Environment

CATEGORY 4: exclusive regional competencies > only a regional representative

- Culture & Audiovisual Sector
- Education
- Tourism
- Youth
- Housing & Spatial Planning

6. The task of the assessor is:

- to assist the head of the delegation for those issues that fall within his sphere of competence.
- to take the floor on those issues that fall within his sphere of competence (in agreement with the head of the delegation).
- to contact his colleagues at home, when during the deliberations the initial position has to be reconsidered.

CATEGORY 5: As a result of the July 2001 state reform two new Council categories have been created. As the principal part of the agricultural responsibilities was transferred to the Regions, the latter prepares the Belgian position. It is defended in the **Agriculture** Council by the federal State Secretary for Foreign Affairs, assisted by assessors from the Flemish and Walloon Regions. If no unanimity is reached between the Regions, the federal State Secretary must abstain in the EU Council of Ministers;

CATEGORY 6: the second additional category concerns the **Fisheries** Council. This policy matter was recently transferred to the Regions as well. As geographically speaking this responsibility is actually applied in the Flemish Region located near the North Sea, this Region carries exclusive responsibility for the Fisheries Council.

The intra-Belgian co-ordination mechanisms

Several co-ordination mechanisms, both at civil servant and political level,⁷ assure a common Belgian position. The Directorate General for European affairs (DGE) within the federal ministry of foreign affairs is responsible for the overall co-ordination of Belgian EU-policy. Sectoral meetings of civil servants and representatives of the political cabinets, organised by the DGE, deal with specific thematic issues. Sectoral inter-ministerial conferences (IC), if necessary deal with reaching agreement on a common position, apart from its main task which is assuring co-operation between the different entities within Belgium.

For general issues on foreign policy the Inter-ministerial Conference of Foreign Policy (ICFP), one of the mentioned IC's, is the main instrument.

When all of the above cannot find an agreement the Committee of Concertation (General committee at the level of Premier and Minister Presidents) is the final means to do so.

Alongside the official intra-Belgian mechanisms

Of course alongside the official intra-Belgian mechanisms Flanders uses additional tools in promoting co-ordination and European action. Day to day contacts in Council and Commission working parties and committees and the pre-

7. The consultation and co-ordination mechanisms provide all the opportunities to come to a concerted Belgian position within the council, which is acceptable for all intra-Belgian parties. When no internal agreement can be reached, the Belgian representative within the council (be it a federal or regional minister) has to abstain. Abstention can also be considered as a political choice. An abstention is in practice, however, not neutral (when unanimity is required, abstention has the effect of a vote in favour; when QMV is required, abstention possibly has the effect of a vote against a proposal in that the QMV is more difficult to attain) and also holds consequences. Therefore, the concerned intra-Belgian actors will usually try to come to an agreement.

sence of regional diplomats and functionaries in the permanent representation are amongst the most important.

Furthermore, the above mentioned network of REGLEG, which has its roots in the regional co-operation in 2000 preparing for the discussions in the Convention and the Intergovernmental Conference (IGC), is considered an interesting tool that could enlarge its scope to more thematic policy-issues in parallel with its institutional interests. Influencing the EU-environmental policy agenda could be a possible first step because of the broad competencies in most of these regions.

FLEMISH POLICY AT THE MULTILATERAL LEVEL AND REPRESENTATION IN INTERNATIONAL ORGANISATIONS

When the EU prepares a common position and speaks with one voice at multilateral negotiations similar rules as in EU-policy apply. In this case Flanders participates in the EU-co-ordinations the same way it does as in the Council-working parties on Environment at the EU-level. This means however that before the EU-co-ordination there always is a Belgian co-ordination in Brussels or *sur place* at the location of the negotiations. When Belgium participates more directly in negotiations, without lead of the EU, the rules for representation and co-ordination are less defined by the 30 June 1994 co-operation agreement that explicitly does not mention the same categories at multilateral level in this context. It is therefore considered by the federal government to be principally a federal matter. This conclusion, according to some experts, is lacking a strong legal basis.

The general rules for representation in international organisations, related to activities in mixed responsibilities, are regulated by the 1994 co-operation agreement. This concerns the Benelux, the Council of Europe, the OECD, the UN and most of the specialised agencies of the UN (such as ILO, UNESCO, and World Health Organisation), the World Trade Organisation, and others.

Flanders as well as the other federated states must duly inform the federal government about their special interest in some activities or programmes of an international organisation as well as about their intention to participate in specific meetings. Each government involved in the matter treated can be represented in the Belgian delegation, both at the technical and at the ministerial levels.

The federated states that desire so can have a representative accepted into an international organisation within the framework of the Permanent Representation of Belgium. This representative receives instructions from his federated state government and informs the Permanent Representative of this. Just as in their bilateral posts (incorporated in the Belgian embassies abroad), these federated state representatives come under the 18 May 1995 co-operation agreement between the federal State and the federated states regarding the status of the representatives of the Communities and Regions in diplomatic and consular posts.

Most recently the Flemish government appointed a Flemish representative to the International organisations in Geneva.

In this regard Flanders has also set up trust funds for its co-operation with some international organisations, such as the UNESCO and the International Labour Organisation, and is currently intensifying co-operation with the World Health Organisation and the OECD.

On the 17th of May 2004 the Flemish Government established a Flemish UNESCO-commission to strengthen and improve direct co-operation with this UN-agency. It is the first known sub-national commission to be established.

EXTERNAL POLICY ON ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Given the important role of the EU and the MEA (Multilateral environmental agreements) for setting out most of the environmental regulations in their member-countries, environment policy provides a good vehicle to exemplify how Flanders is involved in the process of reaching a common Belgian position in foreign policy. Sustainable Development is used to provide a brief reflection on the challenges for good governance vertically as well as horizontally within a federal state.

Division of powers in environmental policy

The regions are the main responsible actor for environmental policy and thus also for the international aspects of it.

The Federal government remains responsible for some residual but critical issues:

- Protection against ionising radiation and radioactive waste
- Transfer of waste
- Defining Product-normalisation(ex. Eco-labelling) (the regions have to be concerted)
- Defining environmental taxes(the regions have to be concerted)
- Protection of the North Sea(not the coastal waters)
- Mixed treaties

Co-ordination mechanisms

The Belgian Co-ordination Committee on Internal Environmental Policy (CCIEP) was established in 1995.

In general this committee co-ordinates all the international environmental dossiers and counts among its members civil servants as well as political representatives from all regions and the federal level. At Ministerial level it is either the Inter-ministerial Conference on Environment (ICE) or the ICFP that agree on a common position.

The VOIM, “Vlaams overleg Internationaal Milieubeleid” is the Flemish body that prepares for the working parties and the plenary of the CCIEP. (Since the Belgian EU-presidency in 2001).

EU-ENVIRONMENTAL POLICY

In theory the CCIEP advises the DGE (see above) that finally decides before defending this Belgian position in the Council Working Party. This hardly ever happens but for politically critical EU- issues consensus is to be found at the DGE.

Flanders, since 2001, has an Environment Attaché within the Flemish delegation in the Permanent Belgian Representation to the EU.

EU Council Category 3

Only very recently, as decided by the ICFP of 28 February 2002 mainly on Flemish demand, environment has moved from category 2 to 3, which is coherent with the wide powers that the regions have in this regard.

So since July 2003 the regions represent Belgium as a whole. Flanders held the first six months of the rotation-system up to December of 2003.

“Pilot” system (EU and multilateral issues)

For every item or cluster of items a “Pilot” is appointed through the CCIEP. This can be either a civil servant from Flanders, Wallonia, Brussels or the Federal level. The items are distributed evenly between them. In principal these “pilots” are responsible for the whole decision chain, both for the input side and feedback.

The pilot is responsible of preparing the Belgian Position and participates in the Council Working parties in preparation of the EU-environment council. If no consensus is reached at this level, Ministers in the Inter-ministerial Conference on Environment (ICE) or the ICFP have the final say. Without consensus Belgium has to abstain. Regional experts supporting this pilot but also guard the particular interest of the region.

Flanders civil servants are very active in the Council Working parties but could be more involved in the agenda setting phase of directives, ie. expert groups set up by the Commission.

MULTILATERAL ENVIRONMENTAL POLICY

In many cases the EU-Council Working Party on International Environmental issues (WPIE) seeks to prepare a common position through co-ordination in Brussels. If no consensus is reached, or in absence of such co-ordinations, the formulation of a position is left to the Member States.

Negotiations concerning the COP's (Conference of the parties) to the UNFCCC (United Nations convention on Climate Change) and the UN CSD (Commission on Sustainable Development) have so far been negotiated by the EU with one voice. At the OECD for example this is not common practice.

The Belgian Co-ordination lies with the Service of the Ministry of Foreign Affairs for political important issues (*inter alia*, Johannesburg, Climate Convention). Other dossiers are taken up by the CCIEP.

Flanders participates in most of the negotiations on MEA's such as conventions on POP's, CITES, Biodiversity, Basel (Waste), Montreal (ozone layer), UNFF.

Ministerial representation in principal is by the federal Minister.(The EU-council category rule is explicitly not used).

The latest CSD⁸ meeting in the UN-headquarters in New York in April 2004 was different in that respect. Belgium was represented at the High-level segment by the Flemish Minister of Environment Agriculture and Development Co-operation in the absence of the Federal Minister. In the plenary he presented the Belgian position but he also had the opportunity to communicate some particular Flemish issues and cases.

SUSTAINABLE DEVELOPMENT (SD)

The EU-preparation for the UNCSD-sessions and the World Summit on Sustainable development (WSSD) used the approach of lead-countries for certain matters because of its broad agenda and horizontal themes. Belgium was leading on the governance aspects of the negotiations. The Development Council and the Environment Council prepared the EU-position for the WSSD, which was finally approved by the General Affairs Council.

Flanders is very active in the CSD and participated throughout the preparations for the WSSD and in Johannesburg. The participation of other Belgian regions in the CSD process is generally of a lower profile with an exception for Ministerial attendance at the World Summit itself.

Implementing policies for Sustainable Development is an extra challenge for good governance on top of the already complex Belgian situation, where hori-

8. Commission on Sustainable Development (UN).

zontal (cross-cutting) and vertical integration (inter-level) have to happen at the same time. Historically the follow up on Sustainable Development policies in Flanders is with the Environment Department but basically all policy-domains are involved. Plans are in place to place the lead responsibility at the highest level with the Minister-President.

In 2000 the first Federal Plan on Sustainable Development was published. This was in some ways regarded as an attempt to recover powers because it contained several violations of the competence divisions in Belgium rather than only dealing with strictly federal powers.⁹

The important new target is to produce a National Sustainable Development strategy to fulfil the international commitment in the Johannesburg Plan of Implementation of having one in place (originally by 2005) and to avoid a plan on SD that is not capturing all the necessary issues because many of them are exclusively regional matters.

This will be an interesting test for the quality of governance in Belgium.

In parallel with this national exercise Flanders considers the commitment to a national strategy also as a regional commitment and will also strive for a proper Flemish SD-strategy.

Flanders considers sharing experience through the above-mentioned international network of regions, NRG4SD as important. On the other hand Flanders is looking out for the possibilities of this potentially important new governance instrument as a voice for the regions in the multilateral arena and wants to actively strengthen its future work.

CONCLUSION

Flanders has a wide range of instruments to conduct a foreign policy in its own right for which other sub-national entities may even envy it. It is though not yet fully exploiting all possibilities. Some of the reasons for this are: limited resources attributed to foreign policy, a modest public interest in a separate Flemish foreign policy and the still growing attribution of powers which put constantly new challenges on the Flemish Administration.

The intra-state participation in international decision-making has reached a high degree of efficiency but can always be improved. It is though the extra-state process where Flanders could take a strong lead in the coming years if it is prepared to do so.

9. In a national survey by the Department of economic and social affairs of the UN in 2001 this federal plan was considered the Belgian national strategy. In the latest survey this was corrected and quotes now a federal strategy, alongside other federal countries such as Canada and Australia.

BIBLIOGRAPHY

Frank Ingelaere (2001); *The distribution of foreign relations powers in the Belgian federation*, Paper for the Bi-annual meeting of Directors-General for International Cultural Relations, Brussels 3rd October 2001.

Bursens et al. (2004): *Vlaams milieubeleid steekt de grenzen over. De Vlaamse betrokkenheid bij de totstandkoming van Europees en multilateraal milieubeleid*. Belgium: Steunpunt Milieubeleidswetenschappen, Universiteit Antwerpen.